

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF INDIANA

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No.
)	
CINERGY CORPORATION)	
PSI ENERGY, INCORPORATED)	
CINCINNATI GAS & ELECTRIC COMPANY)	
)	
Defendant.)	
)	
)	
)	

COMPLAINT

The United States of America, by authority of the Attorney General of the United States and through the undersigned attorneys, acting at the request of the Administrator of the United States Environmental Protection Agency ("EPA"), alleges:

NATURE OF THE ACTION

1. This is a civil action brought against Cinergy Corporation ("Cinergy"), PSI Energy, Incorporated ("PSI"), and Cincinnati Gas & Electric Company ("CG&E") (collectively, the "Defendants") pursuant to Sections 113(b)(2) and 167 of the Clean Air Act ("the Act"), 42 U.S.C. § 7413(b)(2) and 7477, for injunctive relief and the assessment of civil penalties for violations of the Prevention of Significant Deterioration ("PSD") provisions and New Source Performance Standards ("NSPS") of the Act, 42 U.S.C. §§ 7470-92 and 7411, respectively. On numerous occasions, Defendants modified and thereafter operated their coal-fired electric generating units at the Cayuga Generating Station in Cayuga, Indiana, and the Beckjord

Generating Station in New Richmond, Ohio, without first obtaining appropriate permits authorizing these modifications and without installing the best available control technology to control emissions of nitrogen oxides, sulfur dioxide, and particulate matter, as the Act requires.

2. As a result of the Defendants' operation of the Cayuga and Beckjord power plants following these unlawful modifications, and in the absence of appropriate controls, massive amounts of sulfur dioxide, nitrogen oxides, and particulate matter have been, and still are being, released into the atmosphere aggravating air pollution locally and far downwind from these plants. Defendants' violations, alone and in combination with similar violations at other coal-fired electric power plants, have been significant contributors to some of the most severe environmental problems facing the nation today. An order of this Court directing these Defendants, forthwith, to install and operate the best available technology to control these pollutants, in conjunction with orders being sought in similar cases involving other coal-fired electrical power plants in the midwest and southern United States being filed by the United States concurrent with the filing of this Complaint, will produce an immediate, dramatic improvement in the quality of air breathed by millions of Americans. It will reduce illness, protect lakes and streams from further degradation due to the fallout from acid rain, and allow the environment to restore itself following years, and in some cases decades, of illegal emissions.

3. Sulfur dioxide, nitrogen oxides, and particulate matter when emitted into the air can each have adverse environmental and health impacts. Electric utility plants collectively account for about 70 percent of annual sulfur dioxide emissions and 30 percent of nitrogen oxides emissions in the United States. Sulfur Dioxide ("SO₂") interacts in the atmosphere to form

sulfate aerosols, which may be transported long distances through the air. Most sulfate aerosols are particles that can be inhaled. In the eastern United States, sulfate aerosols make up about 25 percent of the inhalable particles, and according to recent studies, high levels of sulfate aerosols are associated with increased sickness and mortality from lung disorders, such as asthma and bronchitis. Lowering sulfate aerosol emissions from electric utility plants may significantly reduce the incidence and the severity of asthma and bronchitis and associated hospital admissions and emergency room visits.

4. Nitrogen oxides ("NO_x") are major producers of ground level ozone, which scientists have long recognized as being harmful to human health. NO_x, transformed into ozone, may cause decreases in lung function (especially among children who are active outdoors) and respiratory problems leading to increased hospital admissions and emergency room visits. Ozone may inflame and possibly cause permanent damage to people's lungs. NO_x is also transformed into nitrogen dioxide ("NO₂"), a dangerous pollutant that can cause people to have difficulty breathing by constricting lower respiratory passages; it may weaken a person's immune system, causing increased susceptibility to pulmonary and other forms of infections. While children and asthmatics are the primary sensitive populations, individuals suffering from bronchitis, emphysema, and other chronic pulmonary diseases have a heightened sensitivity to NO₂ exposure. NO_x also reacts with other pollutants and sunlight to form photochemical smog, which in turn contributes to haze and reduces visibility.

5. SO₂ and NO_x interact in the atmosphere with water and oxygen to form nitric and sulfuric acids, commonly known as acid rain. Acid rain, which also comes in the form of snow

or sleet, "acidifies" lakes and streams rendering them uninhabitable by aquatic life, and it contributes to damage of trees at high elevations. It also accelerates the decay of building materials and paints, including irreplaceable buildings, statues, and sculptures that are part of our nation's cultural heritage. SO₂ and NO_x gases and their particulate matter derivatives, sulfates and nitrates, contribute to visibility degradation and impact public health. In this civil action, and in other civil actions filed concurrently with it, the United States intends to reduce dramatically the amount of SO₂ and NO_x that certain electric utility plants have been illegally releasing into the atmosphere. If the injunctive relief requested by the United States is granted in this case, and in others being filed concurrent with it, many acidified lakes and streams will improve so that they may once again support fish and other forms of aquatic life. Visibility will improve, allowing for increased enjoyment of scenic vistas throughout the eastern half of our country. Stress to our forests from Maine to Georgia will be reduced. Deterioration of our historic buildings and monuments will be slowed. And reductions in SO₂ and NO_x will reduce sulfates, nitrates, and ground level ozone, leading to significant improvements in public health.

6. Particulate matter is the term for solid or liquid particles found in the air. Smaller particulate matter of a diameter of 10 micrometers or less is referred to as PM 10. Power plants are a major source of particulate matter ("PM"). Breathing PM at concentrations in excess of existing ambient air standards may increase the chances of premature death, damage to lung tissue, cancer, or respiratory disease. The elderly, children, and people with chronic lung disease, influenza, or asthma, tend to be especially sensitive to the effects of PM. PM can also make the effects of acid rain worse, reducing visibility and damaging man-made materials. Reductions in

PM illegally released into the atmosphere by the Defendants and others will significantly reduce the serious health and environmental effects caused by PM in our atmosphere.

JURISDICTION AND VENUE

7. This Court has jurisdiction of the subject matter of this action pursuant to Sections 113(b) and 167 of the Act, 42 U.S.C. §§ 7413(b) and 7477, and pursuant to 28 U.S.C. §§ 1331, 1345, and 1355.

8. Venue is proper in this District pursuant to Sections 113(b) of the Act, 42 U.S.C. §§ 7413(b), and 28 U.S.C. §§ 1391(b) and (c), 1395(a), because each of the Defendants either resides, has its principal place of business, or committed violations in this District.

NOTICES

9. The United States is providing notice of the commencement of this action to the States of Indiana and Ohio as required by Section 113(b) of the Act, 42 U.S.C. § 7413(b).

THE DEFENDANTS

10. Defendant PSI is an Indiana corporation that owns and operates the Cayuga electrical generation plant in Cayuga, Vermillion County, Indiana.

11. Defendant CG&E is an Ohio corporation that owns and operates the Beckjord electrical generation plant in New Richmond, Clermont County, Ohio.

12. Defendant Cinergy was created on October 24, 1994, from the combination of Defendants PSI and Cincinnati Gas and Electric. Cinergy is a Delaware corporation with its principal place of business in Cincinnati, Ohio. Cinergy also operates the Cayuga and Beckjord electrical generation plants.

13. Each of the Defendants is a "person" within the meaning of Section 302(e) of the Act, 42 U.S.C. § 7602(e).

STATUTORY BACKGROUND

14. The Clean Air Act is designed to protect and enhance the quality of the nation's air so as to promote the public health and welfare and the productive capacity of its population. Section 101(b)(1) of the Act, 42 U.S.C. § 7401(b)(1).

The National Ambient Air Quality Standards

15. Section 109 of the Act, 42 U.S.C. § 7409, requires the Administrator of EPA to promulgate regulations establishing primary and secondary national ambient air quality standards ("NAAQS" or "ambient air quality standards") for those air pollutants for which air quality criteria have been issued pursuant to Section 108 of the Act, 42 U.S.C. § 7408. The primary NAAQS are to be adequate to protect the public health, and the secondary NAAQS are to be adequate to protect the public welfare, from any known or anticipated adverse effects associated with the presence of the air pollutant in the ambient air.

16. Under Section 107(d) of the Act, 42 U.S.C. § 7407(d), each state is required to designate those areas within its boundaries where the air quality is better or worse than the NAAQS for each criteria pollutant, or where the air quality cannot be classified due to insufficient data. An area that meets the NAAQS for a particular pollutant is termed an "attainment" area. An area that does not meet the NAAQS is termed a "non-attainment" area. An area that cannot be classified due to insufficient data is termed "unclassifiable."

17. At all times relevant to this Complaint, both the Cayuga plant and the Beckjord Plants were located in areas that had been classified as either an attainment area or unclassifiable for one or more of the following pollutants: NO_x, SO₂, PM-10, and PM.

The Prevention of Significant Deterioration Requirements

18. Part C of the Act, 42 U.S.C. §§ 7470-7492, sets forth requirements for the prevention of significant deterioration ("PSD") of air quality in those areas designated as either attainment or unclassifiable for purposes of meeting the NAAQS standards. These requirements are designed to protect public health and welfare, to assure that economic growth will occur in a manner consistent with the preservation of existing clean air resources and to assure that any decision to permit increased air pollution is made only after careful evaluation of all the consequences of such a decision and after participation in the decision making process. These provisions are referred to herein as the "PSD program."

19. Section 165(a) of the Act, 42 U.S.C. § 7475(a), among other things, prohibits the construction and operation of a "major emitting facility" in an area designated as attainment or unclassifiable unless a permit has been issued that comports with the requirements of Section 165, including the requirement that the facility be installed with the best available control technology for each pollutant subject to regulation under the Act that is emitted from the facility. Section 169(1) of the Act, 42 U.S.C. § 7479(1), designates fossil-fuel fired steam electric plants of more than two hundred and fifty million British thermal units per hour heat input and that emit or have the potential to emit one hundred tons per year (tpy) or more of any pollutant to be "major emitting facilities."

20. Section 169(2)(C) of the Act, 42 U.S.C. § 7479(2)(C), defines “construction” as including “modification” (as defined in Section 111(a) of the Act). “Modification” is defined in Section 111(a) of the Act, 42 U.S.C. § 7411(a), to be “any physical change in, or change in the method of operation of, a stationary source which increases the amount of any air pollutant emitted by such source or which results in the emission of any air pollutant not previously emitted.”

New Source Performance Standards

21. Section 111(b)(1)(A) of the Act, 42 U.S.C. § 7411(b)(1)(A), requires the Administrator of U.S. EPA to publish a list of categories of stationary sources that emit or may emit any air pollutant. The list must include any categories of sources which are determined to cause or significantly contribute to air pollution which may endanger public health or welfare.

22. Section 111(b)(1)(B) of the Act, 42 U.S.C. § 7411(b)(1)(B), requires the Administrator of U.S. EPA to promulgate regulations establishing federal standards of performance for new sources of air pollutants within each of these categories. "New sources" are defined as stationary sources, the construction or modification of which is commenced after the publication of the regulations or proposed regulations prescribing a standard of performance applicable to such source. 42 U.S.C. § 7411(a)(2). These standards are known as New Source Performance Standards (“NSPS”)

23. Section 111(e) of the Act, 42 U.S.C. § 7411(e), prohibits an owner or operator of a new source from operating that source in violation of a NSPS after the effective date of the applicable NSPS to such source.

24. Pursuant to Sections 111 and 114 of the Act, 42 U.S.C. §§ 7411, 7414, EPA promulgated 40 C.F.R. Part 60, Subpart A, §§ 60.1 - 60.19, which contains general provisions regarding NSPS.

25. 40 C.F.R. § 60.1 states that the provisions of 40 C.F.R. Part 60 apply to the owner or operator of any stationary source which contains an affected facility, the construction or modification of which is commenced after the publication in Part 60 of any standard (or, if earlier, the date of publication of any proposed standard) applicable to that facility.

26. 40 C.F.R. § 60.2 defines "affected facility" as any apparatus to which a standard is applicable.

27. Pursuant to Section 111(b)(1)(A) of the Act, 42 U.S.C. § 7411(b)(1)(A), at 40 C.F.R. §§ 60.40a-49a (Subpart Da), EPA has identified electric utility steam generating units as one category of stationary sources that cause, or contribute significantly to, air pollution that may reasonably be anticipated to endanger public health or welfare.

28. EPA's general NSPS provisions, referred to in paragraph 22, above, apply to owners or operators of any stationary source that contains an "affected facility" subject to regulation under 40 C.F.R. Part 60. EPA has also promulgated NSPS for various industrial categories, including electric utility steam generating units. NSPS requirements for electric utility steam generating units for which construction or modification is commenced after September 18, 1978, are codified at 40 C.F.R. Part 60, Subpart Da, §§ 60.40a-49a.

29. The "affected facilities" to which Subpart Da applies are each an "electric utility steam generating unit" that is capable of combusting more than 73 megawatts (250 million

Btu/hour) heat input of fossil fuel (either alone or in combination with any other fuel) and for which construction or modification is commenced after September 18, 1978. 40 C.F.R. § 60.40a.

30. Under Subpart Da, “steam generating unit” means any furnace, boiler, or other device, other than nuclear steam generators, used for combusting fuel for the purpose of producing steam, including fossil-fuel-fired steam generators associated with combined cycle gas turbines. 40 C.F.R. § 60.41a.

31. An “electric utility steam generating unit”, under Subpart Da, means any steam electric generating unit that is constructed for the purpose of supplying more than one-third of its potential electric output capacity and more than 25 megawatt (“MW”) electrical output to any utility power distribution system for sale. 40 C.F.R. § 60.41a

32. “Modification” under NSPS is defined as “any physical change in, or change in the method of operation of, an existing facility which increases the amount of any air pollutant (to which a standard applies) emitted into the atmosphere by that facility or which results in the emission of any air pollutant (to which a standard applies) into the atmosphere not previously emitted.” 40 C.F.R. § 60.2.

33. Under 40 C.F.R. § 60.14, upon modification, an existing facility becomes an “affected facility” for which the applicable NSPS must be satisfied.

34. Section 111(e) of the Act, 42 U.S.C. § 7411(e), prohibits the operation of any new source in violation of an NSPS applicable to such source. Thus, a violation of an NSPS is a violation of Section 111(e) of the CAA.

35. Pursuant to 40 C.F.R. § 60.7(a)(4), any owner or operator of an affected facility subject to NSPS must furnish written notification to EPA of any physical or operational change to an existing facility which may increase the emission rate of any air pollutant to which a standard applies postmarked 60 days or as soon as practicable before the change is commenced with information describing the precise nature of the change, present and proposed emission control systems, productive capacity of the facility before and after the change, and the expected completion date of the change.

36. Pursuant to 40 C.F.R. § 60.8, the owner or operator of an affected facility that is an electric utility steam generating unit must conduct a performance test in accordance with 40 C.F.R. § 60.48a within 60 days after achieving the maximum production rate at which the affected facility will be operated, but not later than 180 days after initial startup of such facility and furnish EPA a written report of the results of such performance test.

37. Pursuant to 40 C.F.R. §§ 60.42a, 60.43a, and 60.44a, the owner or operator of an electric utility steam generating unit subject to Subpart Da, may not discharge into the atmosphere from the affected facility any gases which contain PM, SO₂, and NO_x in excess of the applicable limitations.

Enforcement Provisions Under the Clean Air Act

38. Section 113(a)(3) of the Act, 42 U.S.C. § 7413(a)(3), provides that “Except for a requirement or prohibition enforceable under the preceding provisions of this subsection, whenever, on the basis of any information available to the Administrator, the Administrator finds that any person has violated, or is in violation of, any other requirement or prohibition of this subchapter . . . the Administrator may ... bring a civil action in accordance with subsection (b) of this section”

39. Section 113(b)(2) of the Act, 42 U.S.C. § 7413(b)(2), authorizes the Administrator to initiate a judicial enforcement action for a permanent or temporary injunction, and/or for a civil penalty of up to \$25,000 per day of violation for violations occurring on or before January 30, 1997 and \$27,500 per day for each such violation occurring after January 30, 1997, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701, against any person whenever such person has violated, or is in violation of, requirements of the Act other than those specified in Section 113(b)(1), 42 U.S.C. § 7413(b)(1), including violations of Section 165(a), 42 U.S.C. § 7475(a) and Section 111, 42 U.S.C. § 7411.

40. Section 167 of the Act, 42 U.S.C. § 7477, authorizes the Administrator to initiate an action for injunctive relief, as necessary to prevent the construction, modification or operation of a major emitting facility which does not conform to the PSD requirements in Part C of the Act.

41. At all times pertinent to this civil action, Defendants PSI and Cinergy were and are either the owner and/or operator of the Cayuga Electricity Generation Station and both of its boilers, designated Units 1 and 2. At all times relevant to this civil action, Defendants CG&E

and Cinergy were and are either the owner and/or operator of the Beckjord Electricity Generation Station in New Richmond, Ohio.

42. At all times pertinent to this civil action, the Cayuga Station and Beckjord Electricity Generation Station was each a “major emitting facility” and a “major stationary source,” within the meaning of the Act for NO_x, SO₂, and PM. Units 1 and 2 of the Cayuga Station are each an “affected source” that is subject to the requirements of NSPS.

FIRST CLAIM FOR RELIEF

(PSD violations for modifications at the Cayuga facility)

43. Paragraphs 1 through 42 are realleged and incorporated herein by reference.

44. At various times, Defendants PSI and/or Cinergy commenced construction of modifications, as defined in the Act, with respect to the Cayuga plant. These modifications included, but are not limited to, the following individual modifications or combinations of such modifications: (1) replacement of the Unit 1 and Unit 2 forced draft fans in 1988 and 1990, respectively; (2) replacement of the Unit 1 and Unit 2 boiler reheater front pendants in 1995 and 1994, respectively; (3) replacement of the Unit 1 high pressure heater in 1995; (4) replacement of the Unit 1 boiler lower slope tubes in 1996; and (5) replacement of the upper section of the economizer at Unit 1 and Unit 2 in 1985 and 1984, respectively. Defendants PSI and/or Cinergy also constructed additional modifications at their Cayuga plant beyond those described in this paragraph.

45. Defendants PSI and Cinergy violated and continue to violate Section 165(a) and 167 of the Act, 42 U.S.C. §§ 7475(a) and 7477, by, among other things, undertaking such

modifications and continuing to operate the Cayuga facility without (1) obtaining a PSD permit; and (2) applying best available control technology for NO_x, SO₂, and PM, as required.

46. Unless restrained by an order of this Court, these and similar violations of the Act will continue.

47. As provided in Section 113(b)(2) of the Act, 42 U.S.C. § 7413(b), and Section 167 of the Act, 42 U.S.C. § 7477, the violations set forth above subject Defendants PSI and Cinergy to injunctive relief and civil penalties of up to \$25,000 per day for each violation prior to January 30, 1997, and \$27,500 per day for each such violation after January 30, 1997, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701.

SECOND CLAIM FOR RELIEF

(PSD violations for modifications at the Beckjord facility)

48. Paragraphs 1 through 47 are realleged and incorporated herein by reference.

49. At various times, Defendants CG&E and/or Cinergy commenced construction of modifications, as defined in the Act, at the Beckjord plant. These modifications included, but are not limited to the following modifications or combinations of modifications: (1) replacement of the superheater, economizer, reheater header, and coal bunker on Unit 1 in 1987; (2) replacement of the furnace wall tubes, superheater, reheater header, and coal bunker on Unit 2 in 1987; (3) replacement of the superheater and reheater on Unit 3 in 1985; (4) replacement of the waterwall tubing, superheater, turbine blades, and other turbine equipment on Unit 4 in 1989; and, (5) replacement of the economizer, high temperature reheater, and condenser tubing on Unit 5 in

1991. Defendants CG&E and/or Cinergy also constructed additional modifications at their Beckjord plant beyond those described in this paragraph.

50. Defendants CG&E and Cinergy violated and continue to violate Section 165(a) and 167 of the Act, 42 U.S.C. §§ 7475(a) and 7477, by, among other things, undertaking such “modifications” and continuing to operate the Beckjord facility without (1) obtaining a PSD permit; and (2) applying best available control technology for NO_x, SO₂, and PM, when and as required.

51. Unless restrained by an order of this Court, these and similar violations of the Act will continue.

52. As provided in Section 113(b)(2) of the Act, 42 U.S.C. § 7413(b), and Section 167 of the Act, 42 U.S.C. § 7477, the violations set forth above subject Defendants CG&E and Cinergy to injunctive relief and civil penalties of up to \$25,000 per day for each violation prior to January 30, 1997, and \$27,500 per day for each such violation after January 30, 1997, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701.

THIRD CLAIM FOR RELIEF

(NSPS violations for modifications at Units 1 and 2 of the Cayuga facility)

53. Paragraphs 1 through 52 are realleged and incorporated herein by reference.

54. Defendants PSI and Cinergy are the "owner or operator," within the meaning of Section 111(a)(5) of the Act, 42 U.S.C. § 7411(a)(5), and 40 C.F.R. § 60.2, of electric utility

steam generating units, within the meaning of 40 C.F.R. §§ 60.40a and 60.41a, designated as Units 1 and 2 at the Cayuga facility.

55. Units 1 and 2 are each an “affected facility” under Subparts A and Da of NSPS and are subject to the NSPS, including provisions of Subpart A and Da of the NSPS. During 1984 and 1985, Defendants PSI and/or Cinergy modified Units 1 and 2 by replacing the economizers on these units. The modification increased the gross megawatt generation capacity at Units 1 and 2 and the maximum hourly emission rate of SO₂, NO_x and PM above the maximum hourly emissions achievable at that unit prior to the change. The economizer replacement in Units 1 and 2 each constituted a “modification” of an “affected facility” as those terms are defined in the NSPS. 40 C.F.R. §§ 60.2, 60.14(a).

56. With regard to the Unit 1 and Unit 2 economizer replacements, Defendants PSI and/or Cinergy failed to furnish written notification to EPA in accordance with the requirements of 40 C.F.R. § 60.7(a)(4) of any physical or operational change to the Unit which may increase the emission rate of any air pollutant to which a standard applies postmarked 60 days or as soon as practicable before the change is commenced with information describing the precise nature of the change, present and proposed emission control systems, productive capacity of the facility before and after the change, and the expected completion date of the change.

57. With regard to the Unit 1 and Unit 2 economizer replacements, Defendants PSI and/or Cinergy failed to conduct a performance test in accordance with the procedures required by § 60.48a within 60 days after achieving the maximum production rate at Units 1 and 2 (or

within 180 days after initial startup of Units 1 and 2) after the economizer replacements, in violation of 40 C.F.R. § 60.8.

58. Defendants PSI and/or Cinergy failed to comply and continue to fail to comply with the NSPS emissions requirements for SO₂, NO_x, and PM after the economizer replacements, in violation of 40 C.F.R. §§ 60.42a, 60.43a, 60.44a.

59. Each day that Defendants PSI and Cinergy fail to comply with each of the NSPS requirements described in this Complaint, constitutes a violation of the federal NSPS regulations and the Act.

60. Pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), Defendants PSI and Cinergy are subject to injunctive relief and civil penalties up to \$25,000 per day of violation for violations occurring on or before January 30, 1997 and \$27,500 per day for each such violation occurring after January 30, 1997 pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701. Unless enjoined by this Court, Defendants PSI and Cinergy will continue to violate the requirements of the NSPS and the Act.

PRAYER FOR RELIEF

WHEREFORE, based upon all the allegations contained in paragraphs 1 through 64 above, the United States of America requests that this Court:

1. Permanently enjoin the Defendants from operating Units 1-2 of the Cayuga plant and Units 1-6 of the Beckjord plant, including the construction of future modifications, except in accordance with the Clean Air Act and any applicable regulatory requirements;

2. Order Defendants to remedy their past violations by, among other things, requiring Defendants to install, as appropriate, the best available control technology on each Unit at the Cayuga and Beckjord facilities for each pollutant subject to regulation under the Clean Air Act;

3. Order Defendants to apply for a permit that is in conformity with the requirements of the PSD program and, where applicable, to take those actions necessary to achieve compliance with the NSPS program;

4. Order Defendants to conduct audits of their operations to determine if any additional modifications have occurred which would require them to meet the requirements of PSD and/or NSPS, and to report the results of these audits to the United States;

5. Order Defendants to take other appropriate actions to remedy, mitigate, and offset the harm to public health and the environment caused by the violations of the Clean Air Act alleged above;

6. Assess a civil penalty against of up to \$25,000 per day for each violation of the Clean Air Act and the applicable regulations, and \$27,500 per day for each such violation after January 30, 1997;

7. Award Plaintiff its costs of this action; and

8. Grant such other relief as the Court deems just and proper.

Respectfully Submitted,

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